Chicago Truss Connection, LLC *and* Chicago and Northeast Illinois District Council of Carpenters. Case 13–CA–41078–1

October 31, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on May 27 and July 17, 2003, respectively, the General Counsel issued the complaint on July 22, 2003, against Chicago Truss Connection, LLC, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On October 2, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On October 8, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by August 5, 2003, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated September 8, 2003, notified the Respondent that unless an answer was received by September 23, 2003, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois limited liability company with an office and place of business in Ingleside, Illinois, has been engaged in the business of manufacturing trusses and fixtures.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its operations described above, purchased and received goods, products, and materials valued in excess of $50,000 at its Ingleside, Illinois facility directly from points located outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Chicago and Northeast Illinois District Council of Carpenters is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Michael Weisberg, the Respondent's President, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and/or an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent, herein called the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time fabricators and millworkers, fabrication employees, material handlers, movers, and maintenance workers employed by the Employer at its facility located at 27781 Concrete Drive, Ingleside, Illinois; but excluding all temporary employees, office clerical employees, design draftsmen, truck drivers, guards and supervisors as defined in the Act.

On November 18, 2002, the Board certified the Union as the exclusive collective-bargaining representative of employees in the unit. Since about the same date, and at all material times, based upon Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit and had been recognized as such by the Respondent.

About October 31, 2002, the Union and the Respondent began negotiations for an initial collective-bargaining agreement for employees in the unit.

About April 28, 2003, the Respondent, by Michael Weisberg, informed the Union that it had decided to close the plant.

Since about April 28, 2003, the Union has requested that the Respondent negotiate over the effects upon employees of the Respondent's decision to close its plant located in Ingleside, Illinois.

Since about April 28, 2003 and continuing to date, the Respondent, by Michael Weisberg, has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit employees concerning the subject set forth above.

The subject set forth above relates to the wages, hours, and other terms and conditions of employment of the unit, and is a mandatory subject for the purposes of collective bargaining.

CONCLUSIONS OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to close its Ingleside facility, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. Because of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968), as clarified in *Melody Toyota*, 325 NLRB 846 (1998).[1]

Thus, the Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date of the closure of the Ingleside facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, because the Respondent's Ingleside facility has apparently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent at any time since April 28, 2003, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Chicago Truss Connection, LLC, Ingleside, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Chicago and Northeast Illinois District

[1] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). However, as the complaint and motion are unclear as to the actual impact, if any, of the Respondent's decision to close on the unit employees, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Buffalo Weaving and Belting*, 340 NLRB No. 80 (2003); and *ACS Acquisition Corp*., 339 NLRB No. 86 (2003).

Council of Carpenters, as the exclusive collective-bargaining representative of employees in the unit set forth below, concerning the effects on the unit employees of its decision to close its Ingleside, Illinois facility. The bargaining unit is:

> All full-time and regular part-time fabricators and millworkers, fabrication employees, material handlers, movers, and maintenance workers employed by the Employer at its facility located at 27781 Concrete Drive, Ingleside, Illinois; but excluding all temporary employees, office clerical employees, design draftsmen, truck drivers, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on the unit employees of the Respondent's decision to close its Ingleside, Illinois facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[2] to the Union and all unit employees who were employed by the Respondent at the time since April 28, 2003.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C., October 31, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Chicago and Northeast Illinois District Council of Carpenters, as the exclusive collective-bargaining representative of our employees in the following unit, concerning the effects on the unit employees of our decision to close our Ingleside, Illinois facility. The bargaining unit is:

> All full-time and regular part-time fabricators and millworkers, fabrication employees, material handlers, movers, and maintenance workers employed by us at our facility located at 27781 Concrete Drive, Ingleside, Illinois; but excluding all temporary employees, office clerical employees, design draftsmen, truck drivers, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on unit employees of our decision to close our Ingleside, Illinois facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay unit employees limited backpay in connection with our failure to bargain over the effects of our decision to close the Ingleside, Illinois facility, as required by the Decision and Order of the National Labor Relations Board.

CHICAGO TRUSS CONNECTION, LLC